

## REMARKS/ARGUMENTS

Claims 1-31, and 35- 38 are pending in the application. Claims 1-31, and 35-38 are under rejection. Claims 1,2, 4, 11-13, 16, 18, 21-22, 35-38 have been amended. No new matter has been added.

This office action is non-final.

### 1. Objection to Claim #1 regarding claim informality.

The Examiner has objected to claims 6 as informal due to the use of "an" instead of "a". Applicant has amended claim 6 in view of the Examiner's comment.

### 2. Rejection of Claims #1, 11, 21, and 27 under 35 U.S.C § 112 as being indefinite

The Examiner has objected to claims 1, 11, and 37 as indefinite as the claim language is "unclear how a sensing element is A/D Converted".

Applicant has amended claims 1, 11, and 37 to the phrase "A/D converting said flow signals and sensing element" to "A/D conversion of said flow signals by a sensing element". Support for the A/D converting of the flow signals is found in paragraph 53 (See Applicant's Published Application 2005/0158179) the sensing element sensing is supported in paragraph 49 (see "sensing element portion 280 of the transducer 275"). The data from the flow transducer 275 is communicated to the local supervisory control system. (paragraph 53).

The Examiner has objected to claims 21 and 37 as indefinite as the claim language is "said sensing element" lacks antecedent basis. Applicant has amended claims 21 and 27 in view of the Examiner's comments.

3. Rejections of Claims #1,3,5,7-10,12,15-21, 24-31, and 35 as anticipated by U.S. Patent 5,006,044 to Walker

The Examiner has rejected claims 1, 3, 5, 7-10, 12, 15-21, 24-31, and 35 as anticipated by U.S. Patent 5,006,044 to Walker (hereinafter referred to as Walker).

Applicant has amended independent claims 1, 11, 12, 21, 35, and 37 adding two claim limitations. The first claim modification includes the modified check valve and/or flap valve (these two terms are used synonymously in the specification). The second claim limitation reemphasizes Applicant's view on the argument with regard to processing "a portion of" the signals.

3a. Modification of the Check Valve/ Flap Valve

The modified check valve and flap valve include the limiting steps of opening the flap valve and placing a flap element on the valve.

The modification of the flap valve is distinguishable from Walker. Walker describes a rotating "clapper" element (Walker, Element 158, Figure 7-C; also Col 23, lines 19-20) connected to an analog monitoring system. This clapper element is integrated into the valve and apparently requires a custom valve to be installed into the system. The modification of the flap valve, as described and claimed by the Applicant, is a novel improvement insofar that it can be done to pre-existing systems that have standard flap valves installed.

3b. Modification of the claim language "a portion of"

Applicant has amended the claim language changing "at least a portion of" to "a portion of". Applicant respectfully believes that this amendment is responsive to the Examiner's comments regarding the differences between the utilization of all of the flow signals (as described in Walker), and a subset of the flow signals (as described by the Applicant). The

arguments are represented as follows, not for the purposes of reiteration, rather to emphasize that the arguments are not waived.

As noted, Walker uses analog and discrete digital circuitry to implement a simple control cycle consisting of "rest, prime, measure, and detect". The Walker system is limited to these four control states (Walker, Figures 8 (schematic) and 9 (timing cycle), Col 28, line17 – Col 55, line 5) as implemented in the hardware. As such the optimization of pump-off is fixed and predetermined according to the hardware implementation. Walker does describe a "Z-80 based" implementation (Walker, Figure 12 misidentified as Figure 13), but then admits that the Z-80 implementation is simply a different implementation of the same analog and discrete digital circuitry described at length in the application. (Walker, Col 55, lines 6-24). Walker does not "determine an optimum pumping cycle" (Amended Claim 1) since the circuitry of Walker is fixed and cannot be programmatically altered. Furthermore, Walker does not have "a local processing system (that)...accumulates a portion of the digital flow signals in another portion of digital flow data in another portion of said first memory and transfer at least a portion to an electronic transport medium" since the Walker system is fully self contained (See Amended Claim 12). Additionally, Walker does not process "a portion" of the flow data, rather it continually processes all of the flow data, therefore making the amended claims of the application distinguishable ( See Amended Claims 12, 21, 35, and 37). Applicant notes that the argument presented to the Examiner regarding the recording of "a portion" of the flow data was rejected with the statement that "an entirety is at least a portion". (Examiner's response dated August 6, 2008, Page 12). Applicant respectfully disagrees that "a portion" is equivalent to "an entirety". A portion is by definition a subset of an entirety, and thus the two terms are not equivalent.

In conclusion and summary, the Applicant argues that Walker operates as a fixed state machine cycling through the four cycles ("rest, prime, measure, and detect"). The mention of a

"Z-80" processor at the end of application does not transform Walker's machine into a flexible computer controlled processor as described in the amended independent claims. Therefore independent claims 1, 11, 12, 21, 35, and 37 are not anticipated, they are patentable for at least the same reasons, and the rejections should be withdrawn.

*3c. Rejections of Claims 2-10, 13-20, 22-31, 36, and 38:*

Because claims 2-10, 13-20, 22-31, 36, and 38:depend from a claim shown above not to be anticipated, they are patentable for at least the same reasons, and the rejections should be withdrawn.

4. Rejections of Claims 2,4,6, 11, 13, 14, 22, 23,36-38 under 35 U.S.C. § 103(a) as unpatentable over Walker in view of 2002/0018399 to Schultz (herein referred to as Schultz)

Claims 2,4,6, 11, 13, 14, 22, 23,36-38 are rejected on grounds that Bassett teaches a closed loop system for down hole pumping. The independent Claims 1, 11, 12, 21, 35, and 37 are have been amended to include the claim limitation specific to "modified flap valve/modified check valve" and

Schultz is directed towards a "well monitoring and control system" where the sensors are located in the wellbore (See Schulz, Fig 8).

Neither Schultz nor Walker disclose a modified flap valves/check valves that are located in the flow discharge valve, an element that is essential to the instant application. There would be no reasonable expectation of success to combine the reference of Walker (down-hole pump controlling with a unique in-line check valve design) with the reference for Schultz (down hole system monitoring and controlling) to create a surface flow discharge and monitoring system with a unique in-line check valve. In view of this, the Applicant respectfully requests that the

rejection of the dependent claims as obvious should be withdrawn and the application be placed in a condition for allowance.

Nothing herein should be deemed as a disclaimer or surrender of any rights, acquiescence in any rejection, or a waiver of any arguments that might have been raised but were not raised herein or otherwise in the prosecution of this application. Applicant reserves all rights and subject matter with respect to claims being or to be pursued in this or a related application.

### **CONCLUSION**

Applicant submits that in view of the foregoing remarks and/or amendments, the application is in condition for allowance, and favorable action is respectfully requested.

The Commissioner is hereby authorized to charge any fees, including extension fees, or to charge any additional fees or underpayments, or to credit any overpayments, to the Credit Card account referenced on the accompanying Credit Card Payment form (PTO-2038).

Respectfully submitted,

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